

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN TROTTER,

Defendant.

8:11CR83

MEMORANDUM AND ORDER

This matter is before the court on defendant's Motion under [28 U.S.C. § 2255](#) to Vacate, Set Aside, or Correct Sentence by a person in Federal Custody. [Filing No. 165](#). Under the Rules Governing Section 2255 Proceedings for the United States District Courts ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See [28 U.S.C. § 2255](#), Rule 4(b). The rules provide that unless "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court," the court must order the United States Attorney to respond to the motion. *Id.*

After a jury trial, defendant was found guilty of count I of the indictment charging him with felon in possession of a firearm in violation of [18 U.S.C § 922\(g\)\(1\)](#). Defendant filed an appeal challenging his conviction and sentencing, denial of motion for departure and variance, objection to the presentence investigation report, the order overruling the motion to set aside a verdict, the order overruling the motion for judgment of acquittal, and the order overruling the motion for new trial. [Filing No. 128](#). On July 17, 2013, the Eighth Circuit affirmed the decision of the district court. [Filing No. 150](#). On September 3, 2013, the Eighth Circuit denied the defendant's petition for rehearing en banc. [Filing](#)

[No. 152](#). Defendant's writ of certiorari filed with the United States Supreme Court was denied on November 18, 2013. [Filing No. 155](#). On October 7, 2014 this court granted the defendant an extension of time to file his motion pursuant to [28 U.S.C. § 2255](#) and extended the time to file until January 15, 2015. [Filing No. 160](#).

On initial review, the court finds that "it does ... plainly appear that the defendant is entitled to no relief." The court denies this motion because the § 2255 motion lacks merit.

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is appropriate and defendant's motion, [Filing No. 165](#), is denied.

2. A separate judgment will be entered in accordance with this Memorandum and Order.

Dated this 2nd day of March, 2015

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge